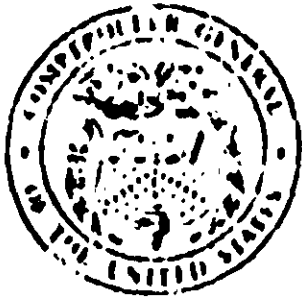


5431
DECISION



Imperial
**COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-191353

DATE: April 5, 1978

MATTER OF: Imperial Products Company

DIGEST:

Question of whether bidder is manufacturer or regular dealer under Walsh-Healey Act is for determination by contracting agency subject to review by Secretary of Labor. If bidder is small business concern and contracting officer has determined that it is not a manufacturer or regular dealer, matter must be referred to SBA for review under section 501 of P.L. 95-89, 91 Stat. 553, 562. SBA may either certify small business to be eligible or forward matter to Secretary of Labor for final disposition. Thus, GAO will not consider such matters.

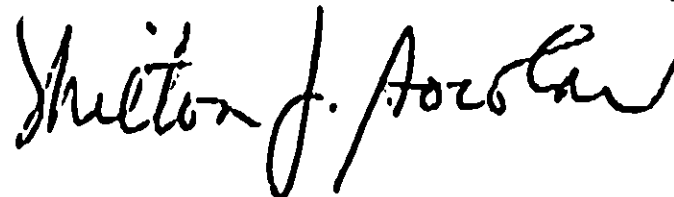
On February 27, 1978, Imperial Products Company protested the award of a contract for metal products to Colonial Metals under solicitation No. N00612-78-R0001 issued by the Department of the Navy. The protester contends that Colonial Metals is ineligible for award because it is not a regular dealer as required under the Walsh-Healey Act.

The question of whether a bidder is a manufacturer or regular dealer is for consideration under the Walsh-Healey Act, 41 U.S.C. §§ 35-45 (1970). The responsibility for such determination rests in the first instance with the contracting agency and is subject to final review by the Secretary of Labor. In the event that the bidder is a small business concern and the contracting officer has determined it to be ineligible because it is not a manufacturer or regular dealer under the Walsh-Healey Act, section 501 of P.L. 95-89, 91 Stat. 553, 562, amending section 8(b) of the Small Business Act of 1958, requires that the matter be referred to the Small Business Administration for review. The Small Business Administration may either certify the small business concern to be eligible or forward the

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matter to the Secretary of Labor for final disposition. Thus, our Office does not review determinations of whether a particular firm is a regular dealer or manufacturer within the purview of the Walsh-Healey Act and related implementing regulations. Acme Plastics, Inc., B-189018, June 8, 1977, 77-1 CPD 415; CNC Company, B-188176, B-188441, March 29, 1977, 77-1 CPD 221.

Accordingly, we decline to consider the protest.

for 
Paul G. Dembling
General Counsel